

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA

Plaintiff,

v.

RAFAEL PINEDA-ROSI,
a/k/a/ JOSE VARGAS-VELEZ,

Defendant.

NOS. CR-04-240-RHW
CV-07-132-RHW**ORDER DISMISSING
DEFENDANT'S MOTION FOR
TIME REDUCTION BY AN
INMATE IN FEDERAL
CUSTODY**

Before the Court is Defendant's Motion for Time Reduction by an Inmate in Federal Custody under 28 U.S.C. § 2255 (Ct. Rec. 35). The motion was filed in the Eastern District of Washington on April 30, 2007.

Defendant pled guilty to illegal reentry in violation of 8 U.S.C. § 1326 and on October 31, 2005, was sentenced to 27 months incarceration, 3 years supervised release, and a \$100 special penalty assessment (Ct. Rec. 32). Defendant also admitted to violating his conditions of supervised release and was sentenced to an additional 10 months, in CR-05-098-RHW. Judgement was entered on November 4, 2005. Defendant did not appeal his sentence. Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts ("Rule 4") the Court must independently examine a Section 2255 motion to determine whether summary dismissal is warranted. Dismissal is appropriate if the movant's "allegations, viewed against the record, either fail to state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal." *Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985); *see also*

**ORDER DISMISSING DEFENDANT'S MOTION FOR TIME REDUCTION
BY AN INMATE IN FEDERAL CUSTODY ~ 1**

1 *United States v. Leonti*, 326 F.3d 1111, 1116 (9th Cir. 2003).

2 On November 8, 2007, the Court entered an Order to Show Cause Why
3 Summary Dismissal is Not Appropriate (Ct. Rec. 36). On December 4, 2007,
4 Defendant filed his response. Defendant asserts that equitable tolling should be
5 granted because he did not have access to what he needed, does not know English,
6 and does not know the laws or procedures.

7 The Court finds that Defendant has not met his burden of showing that the
8 statute of limitations should be equitably tolled.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Defendant's Motion for Time Reduction by an Inmate in Federal
11 Custody under 28 U.S.C. § 2255 (Ct. Rec. 35) is **DISMISSED**.

12 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
13 order, to provide a copy to the Defendant.

14 **DATED** this 28th day of March, 2008.

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17 *s/Robert H. Whaley*

18 ROBERT H. WHALEY
19 Chief United States District Court
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